

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

JUAN M. GARCIA and IRASEMA GARCIA, §

Plaintiffs, §

V. §

UNITED PROPERTY AND CASUALTY
INSURANCE COMPANY and ALLISON
HUNTE, §

Defendants. §

CIVIL ACTION
NO.: _____

**DEFENDANT UNITED PROPERTY AND CASUALTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Defendant United Property and Casualty Insurance Company ("UPC") files this Notice of Removal:

I. Background

1. On July 25, 2017, Plaintiffs Juan M. Garcia and Irasema Garcia ("Plaintiff") filed this lawsuit in Hidalgo County, Texas, against United Property & Casualty Insurance Company and Allison Hunte.

2. Plaintiffs served UPC with a copy of the Petition on August 7, 2017.

3. Upon information and belief, Allison Hunte ("Hunte") has not been served.

4. UPC files this notice of removal within 30 days of receiving Plaintiffs' initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

5. As required by Local Rule 81 and 28 U.S.C. § 1446(a), simultaneously with the filing of this notice of removal, attached hereto as Exhibit "A" is an Index of Matters Being Filed. A copy of the Case Summary Sheet is attached as Exhibit "B." A copy of Plaintiffs' Original

Petition is attached as Exhibit “C.” The Civil Case Information Sheet is attached hereto as Exhibit “D.” A copy of the Civil Process Request for service on United Property & Casualty Insurance Company is attached as Exhibit “E.” A copy of the Citation to the Texas Secretary of State for Allison Hunte is attached as Exhibit “F,” and a copy of the Service Affidavit is attached as Exhibit “G.” A copy of United Property & Casualty Insurance Company’s Original Answer to Plaintiffs’ Original Petition is attached as Exhibit “H.” The List of Counsel and Parties to the Case is attached as Exhibit “I.” Examples of Binding Stipulations Filed in Other Matters is attached as Exhibit “J.” A copy of this Notice is also being filed with the state court and served upon the Plaintiffs.

6. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Hidalgo County, Texas, the place where the removed action has been pending.

II. Basis for Removal

7. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446. This is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

A. The Proper Parties Are Of Diverse Citizenship.

8. Plaintiffs are, and were at the time the lawsuit was filed, residents and citizens of Texas.

9. UPC was, at the time this action was commenced, and still is, a foreign (Florida) property and casualty insurance company authorized to do business in the State of Texas. UPC is organized under Chapter 982 of the Texas Insurance Code.

10. Upon information and belief, Allison Hunte is, and was at the time the lawsuit was filed, a resident and citizen of the State of Florida.

11. Because Plaintiff is a citizen of Texas, UPC is a citizen of Florida, and Allison Hunte is a citizen of Florida, complete diversity of citizenship exists among the parties.

B. The Amount in Controversy Exceeds \$75,000.00.

12. This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiff alleges that UPC is liable under a residential insurance policy because Plaintiff made a claim under that policy and UPC wrongfully adjusted Plaintiff's claim. Plaintiff's counsel signed a Binding Stipulation that states "[n]either Plaintiffs nor their attorney will accept an amount that exceeds \$75,000.00 exclusive of interests and costs." *See* Ex. C at 27-28. This is fraudulent joinder for the sole purpose of circumventing diversity jurisdiction. Plaintiffs' counsel has executed several other lawsuits with similar binding stipulations, signing on behalf of plaintiffs. *See* Ex. J.

13. Moreover, Plaintiff's Original Petition alleges that UPC is liable under various statutory and common law causes of action for consequential damages, statutory penalties, treble damages, exemplary damages, court costs, and attorney's fees. As such, Plaintiffs' alleged damages greatly exceed \$75,000.00.

III. Conclusion and Prayer

14. Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. UPC hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Rhonda J. Thompson

RHONDA J. THOMPSON, ATTORNEY-IN-CHARGE

rthompson@thompsoncoe.com

State Bar No. 24029862

Southern District No.: 17055

DREW A. JONES

drew.jones@thompsoncoe.com

State Bar No. 24083269

Southern District No.: 2078317

THOMPSON, COE, COUSINS & IRONS, LLP.

700 N. Pearl Street, 25th Floor

Dallas, Texas 75201

Telephone: (214) 871-8200

Facsimile: (214) 871-8209

COUNSEL FOR DEFENDANT

UNITED PROPERTY & CASUALTY

INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that on September 1, 2017, a true and correct copy of the foregoing was delivered to the following counsel of record by electronic service and/or facsimile transmission and/or certified mail, return receipt requested:

Martin J. Phipps
J. Gabriel Ortiz
Phipps, LLP
102 9th Street
San Antonio, TX 78215
Facsimile: (210) 340-9887
gortiz@phippsslpc.com
drossi@phippsslpc.com
Counsel for Plaintiffs

/s/ Rhonda J. Thompson

Rhonda J. Thompson